

APPEAL NO. 011712
FILED SEPTEMBER 14, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 25, 2001. The hearing had originally been set for April 24, 2001, but it was not held because the appellant (claimant) failed to appear at the hearing. With respect to the issues before her, the hearing officer determined that the issues of maximum medical improvement (MMI) and impairment rating (IR) "are not ripe for resolution" and she returned those issues to the benefit review officer (BRO) to seek clarification from the designated doctor. The hearing officer also determined that the claimant did not have good cause for his failure to appear at the hearing of April 24, 2001. In his appeal, the claimant asserts error in the hearing officer's determination that he did not have good cause for his failure to attend the hearing of April 24, 2001. Neither party appealed the determination that the issues of MMI and IR are not ripe or the decision to return this case to the BRO and, as such, those matters are not before us on appeal.

DECISION

Affirmed.

In arguing that he had good cause for his failure to appear at the April 24, 2001, hearing, the claimant stated that he sent a letter to the Texas Workers' Compensation Commission (Commission) prior to the hearing asking that the April hearing be canceled and reset at a later date. The copy of the letter dated March 15, 2001, that the claimant produced at the hearing was not date-stamped as having been received by the Commission; thus, the hearing officer determined that it was never sent to the Commission and that the claimant did not have good cause for not appearing at the April hearing. The hearing officer also admitted into evidence as a hearing officer exhibit Dispute Resolution Information System-Contact Data notes; however, it appears that the hearing officer did not see entry number 53 of 64 of that document. That entry is dated March 19, 2001, and provides, in relevant part, as follows:

Clmt has requested in writing on 03 15 01 that his CCH on 4-24 to be cancelled [sic]. (N) advised me that CCH docketing is already aware of clmt's req.

From that entry, it is evident that the claimant requested a continuance of the hearing on March 15, 2001, and March 19, 2001, and that the hearing officer failed to act upon that request for whatever reason in violation of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.10(d) (Rule 142.10(d)). Thus, the hearing officer erred in determining that the claimant had not filed a request for a continuance in this instance. Nevertheless, we cannot reverse her good cause determination because, in the absence of an order granting the continuance, the claimant was still required to attend the April 24, 2001, hearing. Although we have affirmed the determination that the claimant did not have good cause

for failing to appear at the hearing, we would further note that the fact that the claimant was pro se at the time he requested a continuance, as well as the failure of the Commission to issue a clear order in response to the requests for a continuance, are factors that weigh against assessment of an administrative penalty in this case.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **RELIANCE INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**TIMOTHY J. McGUIRE
633 NORTH STATE HIGHWAY 161, SUITE 200
IRVING, TEXAS 75038.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge